STATE OF MICHIGAN

COURT OF APPEALS

DOREEN BINT and ROBERT BINT,

Plaintiffs-Appellees,

v

ROGER DOE, USF HOLLAND, INC., TST SOLUTIONS, INC., USF LOGISTICS, INC., US FREIGHTWAYS, INC., US FREIGHTWAYS CORP., THOMAS NATIONWIDE TRANSPORT, and KPN, INC.,

Defendants,

and

ROGER BROCK and CON-WAY TRANSPORTATION SERVICES, INC.,

Defendants-Appellants.

FOR PUBLICATION
February 6, 2007
9:15 a.m.

No. 266242
Huron Circuit Court
LC No. 02-001746-NI

Official Reported Version

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Defendants Roger Brock and Con-Way Transportation Services, Inc. (defendants), appeal by leave granted the trial court's order granting plaintiffs' motion for rehearing and denying defendants' motion for summary disposition. We affirm.

Defendants argue that the trial court erred in denying their motion for summary disposition because MCL 600.2957(2) does not extend the period of limitations for parties added pursuant to MCR 2.112(K). We disagree. We review de novo a trial court's decision on a motion for summary disposition based on MCR 2.116(C)(7). *Coleman v Kootsillas*, 456 Mich 615, 618; 575 NW2d 527 (1998). In the absence of disputed facts, we also review de novo questions regarding the applicability of a statute of limitations. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). Similarly, we review de novo questions of statutory interpretation, *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006), and the interpretation of court rules, *Knue v Smith*, 269 Mich App 217, 220; 711 NW2d 84 (2005).

MCR 2.112(K) is a rule of procedure and was promulgated in response to the adoption of MCL 600.2957 and MCL 600.6304. *Veltman v Detroit Edison Co*, 261 Mich App 685, 694-695; 683 NW2d 707 (2004). "The purposes of the court rule are to provide notice that liability will be apportioned, provide notice of nonparties subject to allocated liability, and allow an amendment to add parties, thereby promoting judicial efficiency by having all liability issues decided in a single proceeding." *Id*. at 695. This Court has also noted that MCR 2.112(K) "was essentially intended to implement MCL 600.2957." *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 324; 661 NW2d 248 (2003).

Defendants rely on *Staff v Johnson*, 242 Mich App 521; 619 NW2d 57 (2000), in support of their assertion that there is a conflict between MCL 600.2957 and MCR 2.112(K). In *Staff*, this Court found a conflict between MCL 600.2957(2) and MCR 2.112(K)(4) because the statute provides that the trial court *shall* grant leave to file an amended pleading and the court rule provides that a party *may* file an amended pleading. *Id*. at 531-533. This Court also noted that the statute does not place any time restrictions on the filing of a motion to add a nonparty, while the court rule employs a reasonable time frame and contains an unfair-prejudice provision. *Id*. at 531-532. Because statutes of limitations involve matters of procedure, this Court resolved the conflict in favor of the court rule and concluded that the statute of limitations applied because the parties had purposely failed to comply with the notice provisions of the court rule. *Id*. at 533-534. *Staff* is distinguishable from the instant case because the parties complied with the notice provisions of MCR 2.112(K).

It is undisputed that plaintiffs' second amended complaint was filed beyond the three-year limitations period. MCL 600.5805(10). To determine whether a court rule and a statute conflict, both are read according to their plain meanings. *Staff*, *supra* at 530. MCL 600.2957(2) provides that "[a] cause of action added under this subsection is not barred by a period of limitation unless the cause of action would have been barred by a period of limitation at the time of the filing of the original action." MCR 2.112(K) contains no language regarding periods of limitations. Therefore, there is no conflict between the court rule and the statute. Because plaintiffs filed their original complaint within three years of the accident, MCL 600.5805(10) does not apply.

As this Court stated in *Veltman*, *supra* at 695, notice under MCR 2.112(K) is required if a party wishes to avail itself of MCL 600.2957 and MCL 600.6304. In the instant case, some of the original defendants, USF Holland, Inc.; TST Solutions, Inc.; and KPN, Inc., complied with the notice provisions of MCR 2.112(K), and plaintiffs should not be deprived of the opportunity to pursue recovery from defendants. While we are mindful that this resolution requires defendants to defend against an accident that occurred more than nine years ago, this delay may be attributable to defendant Brock, who allegedly left the scene of the accident.

Defendants next contend that the trial court erred in denying their motion for summary disposition because USF Holland's notice of nonparty fault was not timely. We disagree.

MCR 2.112(K)(3)(c) provides that a late notice may be filed "on a showing that the facts on which the notice is based were not and could not with reasonable diligence have been known to the moving party earlier, provided that the late filing of the notice does not result in unfair prejudice to the opposing party." USF Holland was among eight defendants in the original complaint. Although USF Holland knew or should have known that it was not involved in the

accident, it initially had no reason to suspect that the driver was not already a party to the lawsuit. When USF Holland learned in May 2002 of Brock's alleged involvement, it had a pending summary disposition motion, which was granted. Because plaintiffs appealed that order, the case was not active in the trial court again until October 25, 2004.[1] Therefore, USF Holland had a reasonable explanation for not seeking permission to file a notice of nonparty fault until February 18, 2005. Further, plaintiffs, the opposing parties, were not unfairly prejudiced by the late filing of the notice. Therefore, USF Holland complied with the notice requirement, and plaintiffs properly amended their complaint.

In light of our resolution in plaintiffs' favor of defendants' issues on appeal, we need not reach plaintiffs' argument asserting an alternative ground for affirmance.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Bill Schuette

[1] *Bint v Doe*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2004, (Docket Nos. 242252 and 242253). The Michigan Supreme Court denied leave to appeal on October 25, 2004. 471 Mich 900 (2004).